

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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BENJAMIN HORTON,

Plaintiff,

v.

SCHENECTADY COUNTY, et al.,

Defendants.

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No. 8:21-CV-983  
(LEK/CFH)

**APPEARANCES:**

Benjamin Horton  
16-A-3539  
Clinton Correctional Facility  
P.O. Box 2000  
Dannemora, New York 12929  
Plaintiff pro se

**ORDER**

**I. Background**

Plaintiff pro se Benjamin Horton ("plaintiff") commenced an action against Schenectady County and the Schenectady City Police Department on August 4, 2021, by filing a complaint. See Horton v. Schenectady County, et al., No. 1:21-CV-879 (LEK/CFH), Dkt. No. 1. Plaintiff commenced the above-captioned action against Schenectady County, the City of Schenectady Police Department, Detective Joseph McCabe, and Investigator Jason DeLuca on September 1, 2021, by filing a complaint. See Dkt. No. 1. On September 7, 2021, the Court consolidated the two cases, construed the complaint filed on September 1, 2021, as an amended complaint, and ordered that all future pleadings and papers be filed in the above-captioned case. See

Dkt. No. 4. The undersigned subsequently reviewed plaintiff's complaint and recommended that the complaint be dismissed with prejudice and without opportunity to amend. See Dkt. No. 7. Plaintiff filed objections. See Dkt. No. 8. Senior District Judge Lawrence Kahn modified in part, rejected in part, and adopted in part, the undersigned's Report-Recommendation and Order. See Dkt. No. 10. In doing so, Judge Kahn permitted certain claims to proceed past initial review and dismissed all other claims without prejudice. See id.

Plaintiff filed an amended complaint on April 12, 2023. See Dkt. No. 14. The undersigned reviewed the amended complaint pursuant to 28 U.S.C. § 1915 and recommended that (1) plaintiff's Fourth, Sixth, and Fourteenth Amendment claims against the individual defendants; and pendent state law claims against the individual defendants, Schenectady County, and the Schenectady City Police Department be permitted to proceed; (2) that any purported Miranda<sup>1</sup> claim, the Monell<sup>2</sup> claim against the City of Schenectady Police Department, and any purported claims against the county court and jurors be dismissed with prejudice and without leave to amend; and (3) that all other claims be dismissed without prejudice but without leave to amend. See Dkt. No. 16 at 30-31. Plaintiff did not file objections to the Report-Recommendation and Order and on August 30, 2023, Judge Kahn adopted it in its entirety. See Dkt. No. 17. Thus, plaintiff's amended complaint is the operative pleading in this matter, and it shall proceed to service by the United States Marshal against defendants Joseph McCabe, Jason DeLuca, Schenectady County, and the City of Schenectady Police Department. See Dkt. No. 14.

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1996).

<sup>2</sup> Monell v. Dep't of Soc. Serv., 436 U.S. 658, 690-91 (1978).

## II. Conclusion

**WHEREFORE**, it is hereby

**ORDERED**, that the Clerk of the Court shall issue summonses for the named defendants and forward them, along with a copy of the complaint and a packet containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon the defendants; and it is further

**ORDERED**, that a formal response to the amended complaint be filed by defendants or counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on defendants; and it is further

**ORDERED**, that the Clerk is directed to schedule a Rule 16 Conference before the assigned Magistrate Judge; and it is further

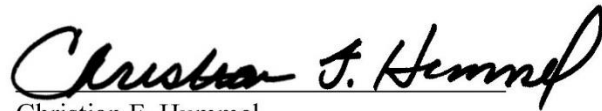
**ORDERED**, that any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy was served upon all opposing parties or their attorneys is to be returned, without processing, by the Clerk. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action; and it is further

**ORDERED**, that all motions shall comply with the Local Rules of Practice of the Northern District; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on plaintiff in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: August 31, 2023  
Albany, New York

A handwritten signature in black ink, reading "Christian F. Hummel". The signature is written in a cursive style with a horizontal line underneath the name.

Christian F. Hummel  
U.S. Magistrate Judge